

functional diseases of the brain—deviations from a normal circulation—as cerebral anæmia and hyperæmia.

And how is this independence of the intra-ocular circulation maintained? No experiments have ever been performed to throw any light on this point.

This independence is undoubtedly sustained as suggested by Dr. Loring, (paper before Society of Neurology, N. Y.) by the normal intra-ocular tension—that tension of the eye which depends upon the normal adjustment of its various solid and fluid parts to each other.

We have examples of the effect of deviation in this normal tension, in glaucoma for instance. Probably one form of glaucoma is due to proliferation of the corpus vitreum.

It is easy to see the importance of having the circulation of the eye independent of the many, and oft repeated, changes to which the circulation of the brain is subject, causing those frequent vacillations of the mental state with which we are all familiar. Such often repeated deviations of the intra-ocular circulation would undoubtedly be non-conducive to perfect unvarying vision.

ART. IV.—ON THE PLEA OF INSANITY, AS AN EXCUSE FOR THE COMMISSION OF CRIME.

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THE plea of insanity, as an excuse for the commission of crime, is made so frequently of late, as to attract the attention, not only of alienists, and physicians, but also of thoughtful men among the general public.

The secular press has occasionally animadverted with not

more severity than justice, upon what has been stigmatized as a device to impede the administration of the law and to defeat the ends of justice.

A casual glance at the reports of criminal trials, *passim*, during the past ten or twelve years—not to pursue the investigation further—will place the logical reader in a dilemma, one horn of which is the conclusion that the increase of insanity is greater, to a frightful degree, than is generally believed, and the other, that in too large a number of cases there is a deliberate and corrupt intention to impede the honest execution of the law.

If the first proposition be accepted, the corollary must be admitted, that the nervous organism of the present generation has deteriorated to such a degree of instability as to subject it to disturbance by the most ordinary and trivial influences; a condition demanding the most earnest and prompt efforts of all, having any active agency in the organization, the development, and the instruction of the human mind, to accomplish the removal of the deteriorating causes, to arrest the degenerating tendency and to rescue the race from mental extinction.

If, however, the proposition be disputed upon the ground that at no time in the history of the race has the human mind exhibited better equipoise, sustained with less disturbance more varied and violent shocks, or given evidence of the possession of a greater degree of force, whether creative or resistant—and the validity of this argument is indisputable—then the other horn of the dilemma rises into most ominous and disagreeable suggestiveness, giving ground for the feeling, if not the conviction that crime, without the legal pale, shakes hands with corruption within.

That an increasing tendency to mental disease is one of the penalties which we pay, for our advance in civilization, and that the development of that tendency, into potent phases of disease occurs *pari passu* therewith, has come to be accepted as a dogma of faith in the creed of the modern alienist with a degree of credulity somewhat remarkable in minds occupied with critical analyses of mental phenomena.

While it may not be denied that the first part of this propo-

sition is true, as wear and tear are correlative with use, the truth of the second part may fairly be disputed upon the ground of lack of proof—resting, as it does now, upon conclusions drawn exclusively from *ex parte* evidence—from statistics—the most elastic and flexible of all standards of comparison—susceptible of adaptation to any theory whatever. It may be readily shown by statistics that there is a larger proportion of insane persons amongst the population of any civilized nation than amongst that of its savage neighbors, that is it may be shown if we study only the statistical tables of the civilized nation, but the savage not awakened yet to an appreciation of their value has kept no statistics so that the comparison becomes that of a known with an unknown quantity and is insusceptible of sustaining any conclusion whatever.

The same argument will apply, though with less conspicuous force, but still with equal truth to comparisons instituted between the statistics of insanity of but a few years ago and those of the present day, when a more comprehensive knowledge of the subject of insanity permits its more ready detection, and when larger wealth and a broader philanthropy provide for, and secure the better protection and care of its unfortunate victims.

Moreover, it has become customary of late, to impose the responsibility—odium, perhaps—the defense of insanity, as of this device, an excuse for crime—upon the shoulders of the medical profession, and thus by the cry “stop thief,” to divert attention from the true source and the real instigators of the evil.

That the responsibility of the defense of insanity in criminal cases, should not rest to any considerable extent upon the medical profession is plain, inasmuch as the conduct and management of such cases is never intrusted to its members, and hence, that whatever agency may in fact belong to them, is necessarily accessory only, and altogether subordinate—and that even in this accessory relation they are placed by practice, if not by law, in several false positions.

The first of these is the quasi-partisan attitude which they are compelled to assume in consequence of the vicious practice of permitting each litigant to select his own expert. The

indicted for the murder of his wife, in the city of Chicago, in the month of June, 1875.

The accused, an Irishman aged about 70 years, endowed with a physical and mental organization of a very low grade—placed upon the stand and permitted to testify in his own behalf, narrated in a manner quiet and self-possessed, with no evidence of emotional disturbance, but with all the garrulity and verbiage so common with the more ignorant of the Irish peasantry, the history of his life, from its earliest period down to the moment of his entrance into the witness stand. Although frequently interrupted, by both court and counsel, and instructed to confine his statement to facts relating essentially to the homicide, with which he was charged, he could not be induced to restrict the details of his narrative, and while indeed spinning “the thread of his verbosity finer than the staple of his argument,” displayed an accuracy of memory of circumstantial detail and relations, worthy of envy by minds much more highly endowed than his own. Married in Ireland in early life, and immigrating to America with his wife and children, his life was unmarked by vicissitudes until the death of his wife, which occurred but a few months prior to the perpetration of the crime for which he was arraigned. His children having meanwhile grown up and left their home in the pursuit of their various careers in life, he was left alone, the possessor of a small cottage and lot, his homestead, and about twelve hundred dollars in money. But a few weeks had elapsed before he was visited by a woman of loose habits, who, after some pretty sharp bargaining, became his lodger; and by means of her seductive arts succeeded in establishing still more intimate relations with him, becoming before the expiration of the night the joint occupant, not only of his cottage, but of his couch likewise. Having thus acquired an ascendancy over him, she soon induced him to marry her, convert his homestead into money, move into the city (of Chicago) and give her the control of his funds which she used, in part, in the establishment of a cigar-stand which was to be a blind for a brothel, and, in part, in reckless extravagance. Having now accomplished her object, the possession of his money, she began a course of systematic abuse, in which she was aided by her male paramours, frequenting the house, adding thereto threats to destroy his life, until actuated by his

own fears for his personal safety, and further urged thereto by the advice of neighbors, who had heard the threats, he purchased a revolver, and loading it, carried it about his person.

Under such circumstances the perpetration of a homicide was almost a foregone conclusion. The fitting occasion soon arrived. While remonstrating with his wife—at the moment engaged in cutting some meat—for her misconduct, she sprang at him, carving knife in hand, with threats of murder and corresponding gestures.

Springing back in terror from the impending knife, he drew the revolver, already prepared for just such an emergency, and fired the fatal shot. Horrified at the result of his impulsive act, and alarmed at the probable consequences, he ran into the adjoining apartment and placing the muzzle of the pistol to, what he supposed to be, the region of the heart, snapped the cartridge once, twice, succeeding only by a third effort in discharging a ball, and inflicting a trivial flesh wound.

Such was the chain of circumstances as succinctly related by the accused, upon which a plea of insanity was based, and strange as it may seem to one who will read the narrative attentively, medical men were found willing to place themselves on record, as deducing the conclusion of insanity from such data. This, however, cannot be said of all these quasi experts, for one or two, while unwilling to admit the insanity of the accused, thought him "partially insane!"

After analyzing the oral testimony of the accused, the writer—who had the questionable honor of appearing under subpoena for the defense—was forced to the following conclusions: first, that the perceptive faculties of the accused were normally acute; second, that his memory was remarkably retentive; third, that his judgment was adequate to all the emergencies of his condition of life: and fourth, that his reason exercised its normal degree of energy, as illustrated by his appreciation of the disgrace entailed upon him by the misconduct of his wife, by his effort to reclaim her, by his apprehension of danger to himself as a consequence of these efforts, and his precautions for his protection; and farther, by his perfectly accurate estimate of the nature of his crime, and its probable consequences, his efforts to escape them by self-de-

struction, and finally, when foiled in this attempt, and bereft of all other hope, by his determination to confess freely on the witness stand, and thereby make a favorable impression upon the jury.

When questioned by counsel, the writer felt compelled, notwithstanding the amount of expert (?) testimony which had been adduced in direct opposition thereto, to express the very positive opinion that "no evidence had been submitted which would justify the conclusion of the insanity of the accused," nor could he admit the "great change in the nature and disposition" of the accused, as illustrated by his abandonment of the simple, orderly and virtuous habits and associations of a lifetime, for the dissolute and vicious courses and companions of his later life, which was urged most vehemently by counsel as "proof of insanity," to be other than the unimpeded expression of the real *unchanged* nature and disposition of the man freed from the salutary influences which had protected his "nature" from temptation and restrained the manifestation of his real "disposition."

Left unprotected by the withdrawal of the better influences which had surrounded his life, which had been to him what character is to stronger men of a higher grade of organization, he fell an easy victim to his first great temptation, as many stronger and wiser have done before, and will do hereafter, without incurring the slightest suspicion of insanity, unless perchance they might be tempted to the commission of crime, and still further tempted by some limb of the law, to feign insanity as a plausible defense.

Furthermore, to the proposition advanced by counsel, in his interrogatories, and asserted by him to be maintained by the highest authorities in medical jurisprudence, that suicide, *per se*, was evidence of insanity, the writer felt bound to dissent very positively; inasmuch, as the crime of suicide may become the final and the strongest link in a chain of proof of establishing the complete sanity of the victim, self-immolated on the altar of shame, remorse, or despair, and more especially, when attempted, as in this instance, as a means of escape, from the legitimate consequences of crime.

The jury in the case, as if rebuking the subterfuge of the

plea, and regarding rather the quality than the quantity of the "expert" testimony, gave their verdict for the prosecution and sent the accused to the penitentiary.

STATE OF ILLINOIS,)
COUNTY OF COOK,) vs. Johansen.

indicted for the murder of a young girl by shooting, is the next case upon the criminal docket of Cook county, Illinois, and is cited very briefly, to show with what injustice the responsibility of the defense of insanity as an excuse for crime is laid upon the shoulders of the medical profession.

The prisoner appeared in court with his counsel, on a motion for a continuance—the second, or third—to another term; the motion being based upon an affidavit, citing the absence of material witnesses, and other matters irrelevant to our subject, and also alleging the insanity of the accused; the said insanity being occasioned by the nature of his occupation, which, being that of a tailor, compelled him to maintain a stooping position over his lap-board, during many hours daily for many years, and thus had caused him to become insane. It appeared, moreover, by the affidavit, that the insanity was marked by hallucinations and delusions, inasmuch as it recites that he believed himself to be pursued by persons desiring to injure him, and that the noise made by his victim pounding upon the wall of his dwelling, was caused by those mysterious beings, that during his paroxysms he was entirely unconscious of his own actions and of everything which transpired around him, and that the homicide, of which he was accused, was perpetrated during one of these periods of unconsciousness, as he had no recollection of it whatever.

A little further in the same affidavit, it is alleged that two of the witnesses, who testified at the coroner's inquest, as eye-witnesses of the act, had sworn falsely, inasmuch, as, at the time of the firing of the fatal shot, there was no one in sight, the two witnesses referred to, having been attracted by the sound of the firing and had only come within view after he had re-entered his house.

A most remarkable statement, indicating the possession and active exercise of all his powers of observation, in noting the absence of witnesses of his crime, and of judgment and

reasoning, in estimating the effect of his shot, in arousing the attention of his neighbors and, in measuring the probable time occupied in their appearance, and his own escape into his house.

All of which mental processes were performed by one, alleged to have been during the whole time in a state of unconsciousness.

Comment upon such absurd allegation would be altogether superfluous.

The attempt to defend this man upon the plea of insanity, was subsequently abandoned, greatly to the credit of the counsel to whom the case was committed, and the jury in this case likewise, sentenced the accused to the penitentiary.

On the 4th day of January, 1876, Henry Davis was arraigned at the bar of the Criminal Court of Cook county, Illinois, indicted for the murder of Charles Whyland, at the restaurant of the latter, known as the "St. Elmo," on Dearborn street, Chicago.

In this case likewise the defense was "insanity," and specifically epileptic insanity.

From the responsibility of this plea, the medical profession must be exonerated, inasmuch as it was sustained by no medical opinions whatever.

The testimony upon which the theory of habitual epilepsy was based, was that of three of the former companions of the defendant, in the field of "negro minstrelsy," in which he had played the somewhat subordinate part of "assistant bill-poster." The first of these testified that the defendant when recovering from an attack of typhoid fever several years ago, was found one night by a policeman, sitting in his night-shirt at the door of witness' house, in the city of New York, crying and declaring that the witness had turned him, the defendant, out of doors, which the witness declared to be untrue, inasmuch as he had treated him very kindly. The witness also testified to seeing the defendant in an epileptic fit, in the street, in Portland, Me., three years after the incident just narrated, i. e., in the summer of 1872, and that in the fit, he frothed at the mouth, but his limbs were not convulsed, and he was very pale after the fit. Further, the same witness testified that the

defendant while they were performing in the city of Terre-Haute became impressed with the idea that he—the witness—was endeavoring to have him—the defendant—discharged from the company, and finding him—the witness—on one occasion writing a letter to his mother, defendant insisted that the letter was intended for their employers, and designed to accomplish his discharge, whereupon, although he was shown the letter by witness, he—the defendant—tore it into fragments. And further, the witness testified that, on another occasion, when they were joint-occupants of the same apartment, at a hotel in the Oil-regions, he—the witness—having purchased some shirts for the defendant, the latter was displeased with them, declaring that they would not fit, and attempted to draw one of the shirts over his trunk, not succeeding in which, he—the defendant—went down to the yard of the hotel, and procuring an axe, proceeded to demolish the trunk; after which he had a hard fit, struggled and frothed at the mouth and bled at the nose.

That three or four weeks afterwards in Pittsfield, Mass., the defendant had another fit in which he “rolled in the dirt” “frothed at the mouth,” “twitched in the legs,” and “*declared that witness was choking him,*” and that “it lasted *five or ten minutes.*” Witness further stated that subsequently, while breakfasting with him, the defendant appeared stupid, failed to order his breakfast, and when it was brought to him, was angry, declaring that the beef-steak and onions brought to him was fish, and refusing to eat it left the table.

The next witness testified to but one incident bearing upon the theory of epilepsy. This was the destruction of the trunk, already described by the first witness, as having occurred in his sole presence. The second witness was passing the door of the apartment, which was open, saw the whole performance of the destruction of the trunk but *did not see the first witness, nor the fit in which the defendant was alleged by the first witness to have fallen.*

The third witness testified to sending the defendant in advance of himself to post bills in a certain town on the Hudson River, and upon coming up with him ascertained that the

work had been done by the defendant in a very unsatisfactory manner, or neglected altogether. Moreover, it was stated by this same witness, that while he and the defendant were crossing the Hudson River, upon the ice, walking near the sleigh which conveyed their baggage, the defendant was seized with a fit. Was placed in the sleigh in an insensible condition and conveyed therein to a house upon the shore, where the services of a physician were procured, and restoratives applied, and the duration of the insensibility was about "an hour."

The mother of the defendant testified, that he had three fits, within her knowledge, which lasted from "two to ten minutes" each, and that after these "he was nearly unconscious for two or three days at a time."

These were the material allegations in the testimony of the mother of the defendant and of the men who had been companions of the defendant during many months, which were offered as a basis, upon which the theory of insanity was to be constructed; and it is worthy of notice that the evidence of each of these witnesses, all members of the same troupe, comprehended essentially different incidents. There was but a solitary incident observed by two witnesses conjointly, i. e.—the demolition of the trunk—narrated above from the testimony of the first and second witnesses. It is likewise noteworthy that neither of these witnesses in his recollection of the incident, could recall the presence of the other, and that the second did not see the most significant incident of the occasion, i. e., the fit, described by the first.

The next witness introduced by the defense was a physician from Toledo, Ohio, who had prescribed casually for the defendant at his office in that city on the 4th of October, 1875, and who testified that defendant's "condition indicated fever from malarial neuralgia." The evidence of this witness was still further impaired by a quantitative error—possibly through inadvertence—in his prescription, which destroyed its value as evidence.

The allegation of epilepsy was farther sustained by the testimony of the woman with whom defendant boarded in the city of Chicago for some months previous to the commission

of the homicide, another woman an inmate of the same house testifying to seeing the defendant in a "fainting fit." It was shown that the defendant had resided in Chicago during three years, and appears to have been quite well known within his own social stratum, yet the knowledge of his epilepsy was restricted to these two women.

The defendant, admitted to testify in his own behalf, alleged that he was, and had been for several years, an epileptic. That on the morning of Thanksgiving Day, 1875, he had two epileptic seizures while alone in his room, after which he took a double dose of the medicine prescribed by the physician in Toledo, above referred to, which consisted of opium, quinine and morphine, but in what quantity, in consequence of the quantitative error in the prescription, already noted, could not be ascertained. He then proceeded to a saloon which he frequented, distance about a quarter of a mile from his lodging, enquired for his letters which were habitually left there, declining the invitation of the bar-keeper to drink, for the reason that he did not feel well.

Retracing his steps, he rode in the street-cars in the opposite direction about a mile, to a barber-shop, and having been shaved, took a warm bath, thinking that it would benefit him. After which, it being now nearly noon, he proceeded to his accustomed resort, the saloon, at which the homicide was committed.

Here, breaking through his good resolution formed in the morning, he drank several glasses of egg-nog. Here he alleges that his memory is at fault, and that he was utterly unconscious of everything which transpired, until he recovered his consciousness in a cell of the station-house.

The first incidents, in point of time, which were adduced by the prosecution, bearing upon the relations of the defendant and his victim, are two angry interviews occurring about a year before, and substantiated by the conjoint testimony of two witnesses, the one in the upper apartment of the restaurant, the other in the alley, in the rear of the same. In these interviews reference was made by defendant to certain injuries and slanderous statements made by his victim, concerning him, for a repetition of which, he threatened his life.

Nothing worthy of animadversion here, was adduced by the

prosecution, down to the point of time at which the defendant's narrative ceased. Concerning the subsequent incidents of the tragedy, there is no conflict of testimony.

After the incident of drinking the egg-nog narrated by the defendant, he next attracts attention by kicking, and otherwise maltreating a pet bear chained outside of the building, and again by demanding from the bar-keeper a package alleged to have been left in his care; a proceeding most unaccountable and suggestive of mental disturbance, until illuminated by the testimony of another bar-keeper, who had officiated during the forenoon, and with whom the package had actually been left by the defendant as claimed by him.

The defendant is next observed grossly insulting an inoffensive guest quietly drinking at the bar, and upon the stranger's refusal to notice him, striking him two or three times in the face with the butt of a revolver, which he had drawn from his pocket for the purpose.

He is next found following this stranger, whom he had so brutally assaulted, into the wash-room at the other end of the restaurant. At this juncture the victim Whyland appears upon the scene, having just entered the building from the street, and upon being notified of the state of affairs passed into the wash-room for the purpose of preventing further trouble.

At the time of Whyland's entrance into this apartment, the defendant had restored his revolver to his pocket, as testified by a waiter who entered the room immediately afterwards. Coming out of the wash-room, a few minutes afterwards, together with the defendant, Whyland is alleged to have been in the act of remonstrating with him for his violence to the stranger but in conciliatory language, when defendant, suddenly drawing his revolver from his side pocket, turned upon him and applying to him a most filthy and obscene epithet, said "damn you I will shoot you anyhow." Whyland, calling to him not to shoot, jumped behind a large stove, near which they had been standing, and changing his position continually to secure the protecting shelter of the stove, was followed in all his movements by the defendant with pistol levelled, and finger on the trigger ready to fire when his aim was secure.

The next act in the tragedy was the flash, the report, and the fall of Whyland into whose brain the bullet had crashed.

The defendant meanwhile taking the most prompt measures for his own protection, seeks safety in flight, not into the street through the door just at hand, but through the long room, through the alley, in the rear into a cross street, closely pursued by the employes of the house, one of whom overtaking him he threatened with his revolver, turning from his pursuers but still keeping them at bay with his pistol; hedged in at every point he re-entered the saloon by the front door, and running through its length, amidst a volley of missiles, hurled at him by his pursuers was brought to bay behind a large ice-box in the rear end of the apartment. Here menacing his assailants with his revolver he was seized by the arms by a policeman and a bystander, and by a dexterous turn of his pinioned hand attempted to shoot the policeman, the discharged ball penetrating the floor at the latter's feet.

On his way to the station-house to which he walked—about half a mile—he was silent; arriving there he gave a fictitious name, and when searched, demanded that his money be counted, stating the amount in his wallet, which upon examination was found to have been correctly stated.

The above presents a fair synopsis of the testimony in this case upon which the defense of insanity, and, as already mentioned herein, specifically of epileptic insanity was based. It is proper to add however in view of the object of this paper, that this defense was probably not suggested by any member of the medical profession; it was certainly sustained by none.

Summoned by the state as expert and questioned as to his opinion regarding the sanity or insanity of the defendant, the writer had no hesitation in expressing the unqualified opinion that, "at the time of the homicide" exclusive of any condition which might have existed previously, the defendant was sane.

Careful analysis of the evidence, and comparison of the acts of the defendant with the incidents which transpired around him render any other conclusion impossible.

From such a comparison it is clear that all his mental faculties were acting in a normal manner.

That his mind was capable of receiving correct impressions,

is shown by his recognition of the difference in the relations which he sustained to the stranger whom he had just assaulted, and Whyland, his victim, towards the first of whom he manifested simply a spirit of brutal ferocity habitual to him, while towards the second this feeling was supplemented, first by resentment, at the interference with his brutal amusement, and next by revenge for some past injury, real or imaginary.

That his memory was normally energetic is shown not only in this manifestation of revenge, just indicated, but still further, by the application to Whyland of the obscene epithet, detailed in the evidence, which must have referred to some remembered infamy. Moreover, the statement by the defendant, of the amount of money in his wallet, which was verified at the police-station, demonstrated positively the active condition of his memory.

No better proof is needed, of the healthy condition of the defendant's judgment, that his action relating immediately to the shooting: for example the cocking of the pistol, the deliberate aim at Whyland, the frequent changes of position, in accordance with the changes of position of the latter in his efforts to secure the shelter of the stove; and most conclusive of all, the fatal result of these changes of position, a result secured only by the possession of a cool and clear head a quick eye, and a steady hand.

Did the defendant reason correctly? his actions show that he did. His precipitate flight, from the scene of his crime, the direction of that flight, not to the street, close at hand, but through the building and into a cross alley, by way of which he might the more readily baffle pursuit.

Prevented in this attempt, with a tenacity of purpose indicative of more than ordinary clearness of head, and force of will, he repeats it; and protecting himself from capture by menacing, with his pistol, but not by shooting his pursuers, he makes a second attempt to pass through the building and escape by way of the alley. Even when brought to bay behind the ice-box he had not yet given up all intention to escape. The appearance of the police-officer—a personage, with whom his previous life had rendered him unpleasantly familiar, convinced him that his last chance of escape had

arrived, that now or never he must strike a decisive blow. Then for the first time abandoning the use of his pistol as a means of menace, he uses it as a means of destruction, and fires a second shot, intending to accomplish a second murder and his own escape at a single blow.

Captured at last but still cool, clearheaded and tenacious, he maintains a prudent taciturnity. Arrived at the station-house, still reasoning correctly regarding the consequences of his crime, he continues his efforts to avert them by shielding himself under a fictitious name. Appreciating clearly his probable necessities in the future, he demands that his money be counted, stating correctly, the amount in advance.

With these evidences on the record of clear and accurate perceptions, retentive memory, ready reminiscence, cool judgment, and correct reasoning—for although the result of his reasoning was incorrect it was due to the restriction of the premises, rather than to any error in his method—the man was alleged to be insane, and medical experts, who denied the allegation, were stigmatized as partisan witnesses eager to swear away an innocent man's life for hire.

Not only was he alleged to be insane, but it was gravely urged by the defense that, the onus of proving his sanity rested upon the people, a proposition which reduces the defense of persons charged with crime, to the simple allegation of insanity.

It is proper here to consider also the data, upon which the experts were required to base their conclusions, in this case. These consisted first, of the acts of the defendant himself in relation to the homicide, which may be assumed to be true, inasmuch, as they were fully comprehensible by any ordinary witness, and were admitted by the defense; and second, conclusions and opinions of his three quondam companions, and the two women, concerning his condition on former occasions, uncontradicted, because insusceptible of contradiction.

The expert was required to consider the whole of this testimony as true, and to assume it as the premise of his conclusion.

It does not appear to have occurred to the counsel, accustomed to formulating hypothetical propositions, that this was a

duplicated hypothesis. In order to assume the truth of the testimony of these witnesses—itself insusceptible of contradiction—it was necessary to assume first their competency as observer. It is when viewed in this relation that the testimony of these witnesses becomes worthless, conceding to them, for the sake of the argument, the largest measure of credibility; it must be likewise conceded that they testified about incidents with which they were totally unfamiliar, and expressed conclusions, which, while possibly correct, were by no means warranted by the incidents, as narrated by them, and at the best only guesses. The truth of the incidents themselves was first assumed, and next the justice of the witness' conclusions, and this second hypothesis was offered as an essential part of the expert's premises.

A physician, who should attempt to prescribe for a disease, upon the diagnosis of an observer so inexperienced as these would be justly stigmatized as reckless, and yet he is required, when called as expert, to do the same thing.

In the above case, while in obedience to the instructions of the public prosecutor, the expert was compelled formally to assent to the truth of this portion of the testimony, he was likewise compelled to reject it as practically inapplicable, and to deduce his conclusions from that portion of the testimony, which, while alone susceptible of contradiction, was yet uncontradicted.

No more severe commentary upon the good faith of the plea of insanity in this case could be made, than its voluntary abandonment by the defense, and the acceptance of the sentence of twenty years at hard labor in the penitentiary, in preference to running the risk of a new trial, after a disagreement of the jury in the first.

In this department of criminal jurisprudence reform is loudly demanded. In the first place a broad line of demarcation should be drawn between the witness, and the expert, who is in no sense of the word a witness, his functions being purely judicial. In the second place opposing counsel should be deprived of the privilege of calling experts by subpoena, who should be called by the court alone at the request of counsel, when required by the nature of the evidence.

Thirdly the expert should be examined by the court and crossed examined by counsel on both sides, within discretion of the court.

And fourthly he should be permitted to estimate the value of evidence, comprehended within his special department, and to reject from consideration that which is essentially false.

This latter privilege is now forbidden to the expert who is alone capable of exercising it, and assigned to the jurymen who is, generally, especially incapable.

Lastly the expert in criminal, as in civil, cases should be compensated for his services. It is surely a hardship endured by no other class of men, to be required, at the demand of any attorney who may feel the need of his brains to assist him in building up his own reputation, or any criminal to save his neck from the well merited halter, to give his time, his knowledge, his private property without just compensation, in contravention to the expressed provisions of common law and common justice.

No. 163 State street, March 17, 1876.

ART. V.—A CONTRIBUTION TO THE PATHOLOGY AND THERAPEUTICS OF PERTUSSIS.*

BY SENECA D. POWELL, M.D., OF NEW YORK CITY.

AT a meeting of the Northwestern Medical and Surgical Society, on March 17, 1875, I called attention to three of the cases I wish to read to you this evening, and again, on November 17, 1875, I reported to the Society two other cases.

CASE I.—November 8, 1874, B. L., aged 6 years, while playing in the street, was run over by a wagon and suffered fracture of the lower third of the humerus. On examining

*Repeated, by request, before the New York Neurological Society, March 6, 1876.